

REMARKS

In response to the Office Action date mailed October 19, 2004, the Applicants respectfully request reconsideration. To further the prosecution of this Application, the Applicants submit the following remarks, have cancelled claims and have added new claims.

Claims 1-37 were pending in this Application. By this Amendment, claims 38-40 have been added, claims 2, 17, and 32 cancelled, and claims 1, 9, 16, 24, 27, and 32 have been amended. Accordingly, claims 1, 3-16, 18-31, and 33-40 are now pending in this Application. Claims 1, 16, 31, 37, and 38 are independent claims and the remaining claims are dependent claims. The Applicant believes that the claims as presented are in condition for allowance. A notice to this affect is respectfully requested.

Claim Rejections

Claims 9, 24, and 27 are rejected under 35 U.S.C. §112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter that the Applicants regard as the invention.

Claims 1, 3-5, 16, 18-20, 31, 33-35, and 37 have been rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,665,273 by Goguen et al. (hereinafter Goguen). The Applicant respectfully disagrees with this contention and asserts that the present claimed invention is not anticipated by any disclosure in the Goguen reference.

Claim Objections

Claims 2, 6-8, 10-15, 17, 21-23, 25, 26, 28-30, 32, and 36 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Goguen Reference

Goguen relates to networking systems and, in particular, to maximizing bandwidth resources in a Multiprotocol Label Switching (MPLS) system.<sup>1</sup> In Goguen,

[the] MPLS system determines the actual traffic that flows through the configured TE tunnels and dynamically re-configures the tunnel bandwidth to reflect the traffic flow. The TE module 710 notified of the change, initiates a path setup procedure to find a path that is able to accommodate the adjusted bandwidth. If the calculated path is the same as the current path, the setup procedure may terminate and the current path is used with the new adjusted bandwidth. Alternatively, the setup procedure is initiated as described with respect to FIG. 2, where the newly established tunnel that meets the adjusted bandwidth and other constraints in the configuration table, replaces the old tunnel and the old tunnel is torn down.<sup>2</sup>

In Goguen, the MPLS system uses byte counters to determine the actual traffic flow through the configured TE tunnels and dynamically re-configures the required bandwidth to reflect the traffic flow.<sup>3</sup>

Claim Amendments

Claim 1 has been amended to include the contents of objected dependent claim 2. Claim 16 has been amended to include the contents of objected dependent claim 17. Claim 31 has been amended to include the contents of objected dependent claim 32. Claim 37 has been amended to include the contents of objected claim 2. The amendments do not add new matter to the application.

Rejections under §112, second paragraph

Claims 9, 24, and 27 are rejected under 35 U.S.C. §112, second paragraph as being indefinite. Claims 9 and 24 have been amended to correct a typographical error, thereby correcting the antecedent basis for the phrase “peak resource usage” in the claims. Claim 27 has been amended to correct a typographical error related to the dependency of the claim. No new matter has been added to the claims by these

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<sup>1</sup> Goguen, col. 1, l. 10-12.

<sup>2</sup> Goguen, col. 7, l. 65 - col. 8, l. 10.

<sup>3</sup> Goguen, col. 5, l. 55-58.

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amendments. Additionally, these corrections are not made to distinguish any prior art nor limit claim scope in any fashion for reasons of patentability as contemplated in *Festo* and its progeny. Reconsideration of the rejections is respectfully requested.

#### Rejections under §102(b)

Independent claims 1, 16, 31, and 37 are rejected under 35 U.S.C. §102(b) as being anticipated by Goguen.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference."<sup>4</sup> "The identical invention must be shown in as complete detail as is contained in the ... claim."<sup>5</sup>

Independent claims 1, 16, 31, and 37 have been amended to include the subject matter of objected claims 2, 17, and 32. As such, Goguen, does not teach or suggest every element of the Applicant's amended independent claims 1, 16, 31, and 37.

Because Goguen does not teach or suggest every element of the Applicant's amended independent claims 1, 16, 31, and 37, the claims are patentable over Goguen and should be allowed to issue. Accordingly, the rejection of these claims should be withdrawn. Claims 3-15, which depend on claim 1, claims 18-30, which depend upon claim 16, and claims 32-36, which depend upon claim 31 should also be allowed to issue as depending upon allowable independent claims (i.e., for at least the reasons presented). Reconsideration of the rejection is respectfully requested.

#### Newly Added Claims

Claims 38-40 have been added and are believed to be in allowable condition. Support for claims 38 and 39 is provided within the specification, for example, on page 22, line 5 through page 26 line 29. Support for claim 40 is provided within the specification, for example, on page 29, line 20 through page 30, line 4. No new matter has been added to the application by addition of the claims.

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<sup>4</sup> *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

<sup>5</sup> *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

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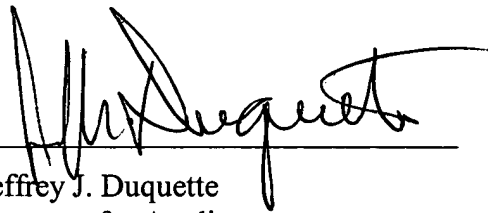
Conclusion

In view of the foregoing remarks, this Application should be in condition for allowance. A Notice to this effect is respectfully requested. If the Examiner believes, after this Response, that the Application is not in condition for allowance, the Examiner is respectfully requested to call the Applicants' Representative at the number below.

Applicants hereby petition for any extension of time that is required to maintain the pendency of this case. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 50-0901.

If the enclosed papers or fees are considered incomplete, the Patent Office is respectfully requested to contact the undersigned collect at (508) 366-9600, in Westborough, Massachusetts.

Respectfully submitted,



Jeffrey J. Duquette  
Attorney for Applicants  
Registration No.: 45,487  
CHAPIN & HUANG, L.L.C.  
Westborough Office Park  
1700 West Park Drive  
Westborough, Massachusetts 01581  
Telephone: (508) 366-9600  
Facsimile: (508) 616-9805  
Customer No.: 022468

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